

**TAB 20**

Russillo, Thomas

January 8, 2009

Irvine, CA

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY ) MDL No. 1456  
AVERAGE WHOLESALE PRICE ) Master File No.  
LITIGATION ) 01-12257-PBS  
\_\_\_\_\_)  
)  
THIS DOCUMENT RELATES TO: ) VIDEOTAPED  
) DEPOSITION OF  
United States of America ex rel. ) THOMAS RUSSILLO  
Ven-a-Care of the Florida Keys, )  
Inc., v. Boehringer Ingelheim ) JANUARY 8, 2009  
Corp. et al., Civil Action No. )  
07-10248-PBS, and The City of )  
New York et al. v. Abbott )  
Laboratories et al., Civil )  
Action No. 03-10643-PBS. )  
\_\_\_\_\_)

(Cross-noticed captions on following pages.)

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7 (Pages 22 to 25)

<p style="text-align: right;">22</p> <p>1 Q Are you familiar with a company called</p> <p>2 Bedford Labs?</p> <p>3 A Yes, I am.</p> <p>4 Q What is that?</p> <p>5 A That was the name of our generic division,</p> <p>6 Ben Venue's generic division.</p> <p>7 Q So Bedford Laboratories is a part of</p> <p>8 Ben Venue. Is that fair to say?</p> <p>9 A That's right. That's correct.</p> <p>10 Q And are you familiar with a company called</p> <p>11 Boehringer Ingelheim Pharmaceuticals, Incorporated?</p> <p>12 A Yes.</p> <p>13 Q If I refer to that as BIPI today, will you</p> <p>14 understand that I mean Boehringer Ingelheim</p> <p>15 Pharmaceuticals, Incorporated?</p> <p>16 A Yes.</p> <p>17 Q Can you describe in general the business of</p> <p>18 BIPI as of 1998? By business I mean, among other</p> <p>19 things, the types of products the company marketed</p> <p>20 and sold.</p> <p>21 A To the best of my knowledge, BIPI included</p> <p>22 Ben Venue Laboratories, Roxane Laboratories, a</p>	<p style="text-align: right;">24</p> <p>1 retained as president and chief operating officer</p> <p>2 of Ben Venue Laboratories.</p> <p>3 So Ben Venue Laboratories, its contract</p> <p>4 manufacturing division, and Bedford Laboratories,</p> <p>5 its generic marketing arm for injectables</p> <p>6 manufactured by Ben Venue, was under my</p> <p>7 responsibility.</p> <p>8 Sometime at the end of 1998, I was also</p> <p>9 given additional responsibilities for the Roxane</p> <p>10 multisource business.</p> <p>11 Q Did you ever have any responsibilities for</p> <p>12 the branded drug business?</p> <p>13 A No, I did not.</p> <p>14 Q What is Roxane Laboratories?</p> <p>15 A Roxane Laboratories, as I understood them,</p> <p>16 was a Columbus-based manufacturing operation that</p> <p>17 had some branded products and multisource products.</p> <p>18 Q And to your knowledge, you were never paid</p> <p>19 by Roxane Laboratories?</p> <p>20 A That is correct.</p> <p>21 Q But in the course of your employment with</p> <p>22 Ben Venue Laboratories, from some point in 1998</p>
<p style="text-align: right;">23</p> <p>1 consumer health business, and branded products.</p> <p>2 Q To your knowledge, Roxane Laboratories was a</p> <p>3 part of BIPI?</p> <p>4 A I believe it was.</p> <p>5 Q Were you ever an employee of BIPI?</p> <p>6 A I think -- I'm not sure. I told you</p> <p>7 earlier, my paycheck came from Ben Venue.</p> <p>8 Q Your paycheck came from Ben Venue?</p> <p>9 A Yes.</p> <p>10 Q Did your paycheck ever come from any other</p> <p>11 Boehringer Ingelheim entities from the period of</p> <p>12 November 1997 until 2005?</p> <p>13 A I don't believe so.</p> <p>14 Q Did you have any responsibility for any</p> <p>15 portions of BIPI's business?</p> <p>16 A Yes.</p> <p>17 Q What responsibilities were those?</p> <p>18 A At what point in time are you talking about?</p> <p>19 Q Take me from 1998 up to the present, to the</p> <p>20 best of your ability.</p> <p>21 A From 1997, November 1997, at the time of the</p> <p>22 acquisition, I was retained in my current title,</p>	<p style="text-align: right;">25</p> <p>1 onwards, you had responsibility for part of</p> <p>2 Roxane's business?</p> <p>3 A That's correct.</p> <p>4 Q I'm going to show you a document that the</p> <p>5 court reporter will mark as Exhibit 1.</p> <p>6 (Exhibit Russillo 001 is marked.)</p> <p>7 Q BY MR. FAUCI: As a general ground rule for</p> <p>8 whenever I show you a document, take time to</p> <p>9 familiarize yourself with it. If it's a lengthy</p> <p>10 document, I will try and direct your attention to</p> <p>11 specific points of it.</p> <p>12 Are you familiar with this document?</p> <p>13 A I don't recall actually seeing this</p> <p>14 document, but -- so I have to say no, I'm not</p> <p>15 familiar with this document.</p> <p>16 Q At the top, it says "Roxane Laboratories,</p> <p>17 Inc., Unanimous Written Consent of Directors." Do</p> <p>18 you see that?</p> <p>19 A Yes, I do.</p> <p>20 Q If you look at the last paragraph, beginning</p> <p>21 with the word "resolved."</p> <p>22 A Yes.</p>

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<p style="text-align: right;">26</p> <p>1 Q Can you read that section for me?</p> <p>2 A <b>"Resolved that, effective October 23, 1998,</b></p> <p>3 <b>Mr. Thomas R. Russillo, President and Chief</b></p> <p>4 <b>Operating Officer of this Corporation's affiliate,</b></p> <p>5 <b>Ben Venue Laboratories, Inc., of Bedford, Ohio, be,</b></p> <p>6 <b>and he hereby is, assigned responsibility for the</b></p> <p>7 <b>Marketing of Multisource Products, Medical Affairs,</b></p> <p>8 <b>Drug Regulatory Affairs, and Scientific Affairs</b></p> <p>9 <b>functions of this Corporation."</b></p> <p>10 Q What does it mean that you were assigned</p> <p>11 responsibility for these functions?</p> <p>12 A <b>I'm not sure what this meant. I only know</b></p> <p>13 <b>what happened.</b></p> <p>14 Q Did you regard Ben Venue and Roxane as</p> <p>15 separate companies?</p> <p>16 A <b>Yes, I did.</b></p> <p>17 Q If you were an employee of Ben Venue, why do</p> <p>18 you think you were put in charge of Roxane's</p> <p>19 marketing department?</p> <p>20 A <b>I was put in charge of Roxane's multisource</b></p> <p>21 <b>marketing because they marketed generics, and Ben</b></p> <p>22 <b>Venue had been marketing generics since 1992.</b></p>	<p style="text-align: right;">28</p> <p>1 which you became in charge of Roxane's marketing</p> <p>2 department for multisource drugs?</p> <p>3 A <b>Yes, there was.</b></p> <p>4 Q And was that around the 1998 time frame?</p> <p>5 A <b>The end of 1998, yes.</b></p> <p>6 Q Was there anyone at Roxane that you had to</p> <p>7 report to regarding marketing decisions for</p> <p>8 Roxane's multisource products?</p> <p>9 MS. RIVERA: Object to form.</p> <p>10 THE WITNESS: Werner Gerstenberg was the</p> <p>11 president of Roxane Laboratories. As such, I had</p> <p>12 an obligation to keep him informed as to what was</p> <p>13 going on.</p> <p>14 Q BY MR. FAUCI: How often did you talk to</p> <p>15 Mr. Gerstenberg?</p> <p>16 A <b>I would say weekly.</b></p> <p>17 Q If you made a marketing decision on a</p> <p>18 Roxane's product, did you have to run it by</p> <p>19 Mr. Gerstenberg?</p> <p>20 A <b>Not normally, no.</b></p> <p>21 Q Were there occasions when you needed to have</p> <p>22 Mr. Gerstenberg approve a Roxane marketing</p>
<p style="text-align: right;">27</p> <p>1 Q From November 1997 -- oh, sorry. Strike</p> <p>2 that.</p> <p>3 From the date of this document,</p> <p>4 October 1998, is it accurate to say that you were</p> <p>5 in charge for the marketing of multisource products</p> <p>6 at Roxane?</p> <p>7 MS. RIVERA: Object to form.</p> <p>8 THE WITNESS: I'm not sure of the exact date</p> <p>9 it happened. It was at the end of 1998.</p> <p>10 Q BY MR. FAUCI: If you look at the bottom, it</p> <p>11 says, "In witness whereof, we have duly signed this</p> <p>12 instrument effective as of the 14th day of October,</p> <p>13 1998."</p> <p>14 Do you see that?</p> <p>15 A <b>Yes, I do.</b></p> <p>16 Q From that point on, do you think it's fair</p> <p>17 to say that you were in charge of Roxane's</p> <p>18 marketing?</p> <p>19 MS. RIVERA: Object to form.</p> <p>20 THE WITNESS: I'm not sure that that's fair</p> <p>21 to say. No.</p> <p>22 Q BY MR. FAUCI: Was there a point in time at</p>	<p style="text-align: right;">29</p> <p>1 decision?</p> <p>2 A <b>Those occasions would have been limited.</b></p> <p>3 <b>And they would have been at my discretion to advise</b></p> <p>4 <b>him, as he was my supervisor.</b></p> <p>5 Q When might you have advised him of a</p> <p>6 decision that you wanted his sign-off on?</p> <p>7 A <b>I don't recall any specific ones.</b></p> <p>8 Q Was there anyone at Boehringer Ingelheim</p> <p>9 that you had to report to regarding marketing</p> <p>10 decisions for Roxane's multisource products?</p> <p>11 MS. RIVERA: Object to form.</p> <p>12 THE WITNESS: As I said earlier, I reported</p> <p>13 to Werner Gerstenberg. So anything that I did as</p> <p>14 either Ben Venue COO or as head of multisource</p> <p>15 business, ultimately I reported to Werner.</p> <p>16 So anything that I thought was -- that he</p> <p>17 was in need of being aware of, I would advise him</p> <p>18 of.</p> <p>19 Q BY MR. FAUCI: Did you ever report to Shelly</p> <p>20 Berkle?</p> <p>21 A <b>No, I did not.</b></p> <p>22 Q Other than Mr. Gerstenberg, can you think of</p>

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<p style="text-align: right;">30</p> <p>1 anyone else that you reported to during your time</p> <p>2 from 1998 to the present -- to the end of your time</p> <p>3 at Roxane?</p> <p>4 <b>A Yes.</b></p> <p>5 Q Who else?</p> <p>6 <b>A I reported -- Werner Gerstenberg retired in,</b></p> <p>7 <b>I believe, December of 2003 and was replaced by</b></p> <p>8 <b>Marty Carroll as the new CEO. I reported to him.</b></p> <p>9 Q Anyone else?</p> <p>10 <b>A I can't think of anyone.</b></p> <p>11 Q You said Roxane also marketed branded</p> <p>12 products?</p> <p>13 <b>A At some point in time, yes.</b></p> <p>14 Q Are you familiar with the term "branded</p> <p>15 generic"?</p> <p>16 <b>A Yes.</b></p> <p>17 Q What is a branded generic?</p> <p>18 <b>A As the name would indicate, it is a generic</b></p> <p>19 <b>that has been given a brand name.</b></p> <p>20 Q Who had responsibility for marketing</p> <p>21 Roxane's branded generics?</p> <p>22 <b>A At what point in time?</b></p>	<p style="text-align: right;">32</p> <p>1 MS. RIVERA: Object to form.</p> <p>2 THE WITNESS: There were many branded</p> <p>3 generics. Some of those branded generics were</p> <p>4 retained by the multisource division. So for those</p> <p>5 products, I would have still had responsibility.</p> <p>6 The others, the ones that were not -- they</p> <p>7 were branded generics, but they were not part of</p> <p>8 the multisource business, those products were</p> <p>9 transferred to BIPI.</p> <p>10 Q BY MR. FAUCI: Who would have had</p> <p>11 responsibility for those products at BIPI?</p> <p>12 <b>A Well, there was a group of Roxane employees</b></p> <p>13 <b>who managed the branded Roxane business.</b></p> <p>14 Q Can you tell me who those people are?</p> <p>15 <b>A Again, they changed at various times. Ed</b></p> <p>16 <b>Tupa would be the name that comes to mind.</b></p> <p>17 Q Did Shelly Berkle have responsibility for</p> <p>18 Roxane's branded generic products?</p> <p>19 <b>A My recollection is that Ed Tupa at some</b></p> <p>20 <b>point in time reported to Shelly.</b></p> <p>21 Q Do you know if Mr. Berkle had responsibility</p> <p>22 for Roxane's branded generic products at any point</p>
<p style="text-align: right;">31</p> <p>1 Q 1998 onwards.</p> <p>2 <b>A Some of the branded generics became the</b></p> <p>3 <b>responsibility of Roxane multisource at the end of</b></p> <p>4 <b>1998. So I had responsibility, people who worked</b></p> <p>5 <b>for me had responsibility.</b></p> <p>6 Q Can you think of anyone else that had</p> <p>7 responsibilities for Roxane's branded generics?</p> <p>8 <b>A As I said, not all branded generics at</b></p> <p>9 <b>Roxane were my responsibility.</b></p> <p>10 Q Do you know whose responsibility they were?</p> <p>11 MS. RIVERA: Object to form.</p> <p>12 Q BY MR. FAUCI: Do you know -- let me</p> <p>13 rephrase that question.</p> <p>14 For the drugs at Roxane that you did not</p> <p>15 have responsibility for marketing for, who was in</p> <p>16 charge of marketing?</p> <p>17 MS. RIVERA: Object to form.</p> <p>18 MR. FAUCI: That's a horrible question. Let</p> <p>19 me rephrase that.</p> <p>20 Q For the branded generic drugs at Roxane, can</p> <p>21 you tell me who had responsibility for marketing</p> <p>22 decisions?</p>	<p style="text-align: right;">33</p> <p>1 in time?</p> <p>2 MS. RIVERA: Object to form. Asked and</p> <p>3 answered.</p> <p>4 THE WITNESS: I think he had oversight of</p> <p>5 that, just like I had oversight of multisource</p> <p>6 business.</p> <p>7 Q BY MR. FAUCI: I'm going to direct your</p> <p>8 attention to the names at the bottom of this</p> <p>9 document, Exhibit 1. Who is Walter Poerschmann?</p> <p>10 <b>A Walter Poerschmann was a German-based</b></p> <p>11 <b>employee of Boehringer Ingelheim, who was head -- I</b></p> <p>12 <b>think he was head of North America and South</b></p> <p>13 <b>America Ethical Pharmaceuticals.</b></p> <p>14 Q What does Ethical Pharmaceuticals mean?</p> <p>15 <b>A Branded pharmaceuticals.</b></p> <p>16 Q What about Philip Franks?</p> <p>17 <b>A Philip Franks was, I believe, the general</b></p> <p>18 <b>counsel at the time.</b></p> <p>19 Q And Sheldon Berkle. Can you tell me who he</p> <p>20 was?</p> <p>21 <b>A He was head of Ethical Pharmaceuticals</b></p> <p>22 <b>business unit.</b></p>

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<p style="text-align: right;">46</p> <p>1 whether Roxane's generic business was included in</p> <p>2 the business unit Ethical Pharmaceuticals?</p> <p>3 <b>A It doesn't change my opinion.</b></p> <p>4 Q Do you have any sense why Mr. Berkle would</p> <p>5 make that representation to the BIC board?</p> <p>6 MS. RIVERA: Object to form and foundation.</p> <p>7 THE WITNESS: I believe that on an</p> <p>8 organization chart, that's the way it was set up;</p> <p>9 but in actuality, that is not the way it was</p> <p>10 operated.</p> <p>11 Q BY MR. FAUCI: Was it common for Roxane</p> <p>12 business to be discussed at BIC board meetings?</p> <p>13 MS. RIVERA: Object to form and foundation.</p> <p>14 THE WITNESS: I wasn't at BIC board meetings</p> <p>15 all the time, so I don't know how many or what was</p> <p>16 discussed.</p> <p>17 Q BY MR. FAUCI: Do you have a recollection as</p> <p>18 to approximately how many you attended?</p> <p>19 <b>A No, I don't.</b></p> <p>20 Q Was it more than one?</p> <p>21 <b>A I would imagine so.</b></p> <p>22 Q Let's look at a new document that the court</p>	<p style="text-align: right;">48</p> <p>1 THE WITNESS: I would assume it's because he</p> <p>2 was head of branded business, and there was a</p> <p>3 portion of the Roxane products that were in the</p> <p>4 branded business.</p> <p>5 Q BY MR. FAUCI: And he was responsible for</p> <p>6 those?</p> <p>7 MS. RIVERA: Object to form.</p> <p>8 THE WITNESS: Ultimately.</p> <p>9 Q BY MR. FAUCI: Below Mr. Berkle, your name</p> <p>10 is listed as "BV and RLI Multisource." Do you see</p> <p>11 that?</p> <p>12 <b>A Yes, I do.</b></p> <p>13 Q Does RLI refer to Roxane?</p> <p>14 <b>A RLI refers to Roxane Labs, Incorporated.</b></p> <p>15 Q And is this entry in the chart consistent</p> <p>16 with your recollection that from 1990 -- in the</p> <p>17 1999 time frame, you were in charge of the</p> <p>18 multisource business at both Roxane and Ben Venue?</p> <p>19 <b>A Would you repeat that question?</b></p> <p>20 MR. FAUCI: Can you repeat that question,</p> <p>21 please?</p> <p>22 (Record is read.)</p>
<p style="text-align: right;">47</p> <p>1 reporter will mark as Exhibit 4.</p> <p>2 (Exhibit Russillo 004 is marked.)</p> <p>3 Q BY MR. FAUCI: This document says, "Roxane</p> <p>4 Laboratories, Inc., Budget 1999," and it appears to</p> <p>5 be an organizational chart.</p> <p>6 Take a moment to familiarize yourself with</p> <p>7 it, and let me know verbally when you're ready for</p> <p>8 a question.</p> <p>9 <b>A Yes, I'm ready.</b></p> <p>10 Q Do you see that Mr. Berkle, as head of the</p> <p>11 business unit Ethical Pharmaceuticals, appears in</p> <p>12 this organizational chart?</p> <p>13 <b>A Yes, I do.</b></p> <p>14 Q Do you have any knowledge as to why</p> <p>15 Mr. Berkle would be appearing in a Roxane Labs</p> <p>16 organizational chart?</p> <p>17 <b>A I can only surmise why.</b></p> <p>18 Q What would that be?</p> <p>19 <b>A That would be --</b></p> <p>20 MS. RIVERA: Object to form. Calls for</p> <p>21 speculation.</p> <p>22 Go ahead.</p>	<p style="text-align: right;">49</p> <p>1 THE WITNESS: My title is correct, if that's</p> <p>2 the question you're asking.</p> <p>3 Q BY MR. FAUCI: And functionally, would you</p> <p>4 agree that you were responsible for the marketing</p> <p>5 department at Ben Venue and Roxane?</p> <p>6 <b>A Yes.</b></p> <p>7 Q Below you, it lists "Manager, Multisource,</p> <p>8 J. Waterer."</p> <p>9 <b>A Yes.</b></p> <p>10 Q Who is J. Waterer?</p> <p>11 <b>A Judy Waterer was the manager of marketing.</b></p> <p>12 Q Did she report to you?</p> <p>13 <b>A Yes, she did.</b></p> <p>14 Q What were her job responsibilities?</p> <p>15 <b>A She was responsible for the Roxane</b></p> <p>16 <b>multisource product portfolio, marketing of those</b></p> <p>17 <b>products, setting of prices, and coordination with</b></p> <p>18 <b>the salespeople. She was responsible for preparing</b></p> <p>19 <b>pipeline models, for forecasting sales.</b></p> <p>20 Q Which prices?</p> <p>21 <b>A Judy was responsible for all Roxane product</b></p> <p>22 <b>pricing, Roxane multisource product pricing.</b></p>

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<p style="text-align: right;">50</p> <p>1 Q Average wholesale pricing?</p> <p>2 A <b>She would have set the AWP. Yes.</b></p> <p>3 Q Wholesale acquisition costs?</p> <p>4 A <b>Yes.</b></p> <p>5 Q And contract pricing?</p> <p>6 A <b>Yes.</b></p> <p>7 Q What's a contract price?</p> <p>8 A <b>A contract price is a specific price to a</b></p> <p>9 <b>specific customer.</b></p> <p>10 Q Is the contract price typically lower than</p> <p>11 the WAC price?</p> <p>12 A <b>Contract price, to my knowledge, is almost</b></p> <p>13 <b>always lower than the WAC price.</b></p> <p>14 Q How often did you interact with Ms. Waterer?</p> <p>15 Daily?</p> <p>16 A <b>Some days -- sometimes daily. Sometimes not</b></p> <p>17 <b>for days at a time.</b></p> <p>18 Q The chart also lists "Marketing Controller,</p> <p>19 G. Ciarelli." Who is G. Ciarelli?</p> <p>20 A <b>Gregg Ciarelli was within the finance</b></p> <p>21 <b>department, the controller for the branded business</b></p> <p>22 <b>unit.</b></p>	<p style="text-align: right;">52</p> <p>1 A <b>Yes.</b></p> <p>2 Q What would you interact with him about?</p> <p>3 A <b>Probably along two lines. It would have</b></p> <p>4 <b>been organizationally how his people were</b></p> <p>5 <b>performing and how accurate and timely they were in</b></p> <p>6 <b>processing our orders.</b></p> <p>7 <b>Most likely, that would be the major</b></p> <p>8 <b>discussions I would have with him.</b></p> <p>9 Q Anything else?</p> <p>10 A <b>Probably individually, but very</b></p> <p>11 <b>sporadically, talk of -- discussions about pricing.</b></p> <p>12 Q Average wholesale prices?</p> <p>13 A <b>Possibly.</b></p> <p>14 Q Taking a step back, can you just describe to</p> <p>15 me in general terms what it is the marketing</p> <p>16 department did at Roxane?</p> <p>17 A <b>You're talking about generic marketing at</b></p> <p>18 <b>Roxane?</b></p> <p>19 Q Yes. I'm talking about the portion of the</p> <p>20 marketing department that you had responsibility</p> <p>21 for, which I understand is the multisource part of</p> <p>22 the business.</p>
<p style="text-align: right;">51</p> <p>1 Q Was he a Boehringer Ingelheim person?</p> <p>2 MS. RIVERA: Object to form.</p> <p>3 THE WITNESS: Let's see. Let me find his</p> <p>4 name on here.</p> <p>5 Q BY MR. FAUCI: It's two over from you.</p> <p>6 A <b>I see it. Okay.</b></p> <p>7 Q Under "Executive VP, Shelly Berkle."</p> <p>8 A <b>Yeah, yeah. My understanding is he reported</b></p> <p>9 <b>to Shelly, so who -- again, I don't know who wrote</b></p> <p>10 <b>his paycheck.</b></p> <p>11 Q Did he have responsibility for Roxane?</p> <p>12 MS. RIVERA: Object to form and foundation.</p> <p>13 THE WITNESS: He had within his group, the</p> <p>14 contracting division. And the contracting was a</p> <p>15 shared service. The shared services within his</p> <p>16 group were responsible for the multisource Roxane</p> <p>17 products.</p> <p>18 Q BY MR. FAUCI: What does a marketing</p> <p>19 controller do?</p> <p>20 A <b>A lot of different stuff. I mean, you'd</b></p> <p>21 <b>have to ask him what he does specifically.</b></p> <p>22 Q Did you interact with him?</p>	<p style="text-align: right;">53</p> <p>1 A <b>Yes. And you'd like to know what Judy</b></p> <p>2 <b>Waterer's responsibilities were?</b></p> <p>3 Q What yours and Judy Waterer's</p> <p>4 responsibilities were.</p> <p>5 A <b>Okay. Responsible for merchandising the</b></p> <p>6 <b>portfolio of products that Roxane multisource was</b></p> <p>7 <b>either selling currently or developing for the</b></p> <p>8 <b>future.</b></p> <p>9 Q Let me try and make this more focused for</p> <p>10 you. Can you describe the marketing department's</p> <p>11 involvement with the launch of a new product?</p> <p>12 A <b>Yes, I can. The marketing department would</b></p> <p>13 <b>probably put together a sales plan, a marketing</b></p> <p>14 <b>plan, with projected pricing, projected volume,</b></p> <p>15 <b>profit and loss.</b></p> <p>16 Q Projected AWP's?</p> <p>17 A <b>Yes.</b></p> <p>18 Q Would the marketing department actually set</p> <p>19 the AWP?</p> <p>20 A <b>Yes.</b></p> <p>21 Q Is it fair to say that you and Ms. Waterer</p> <p>22 would be responsible for setting the AWP?</p>

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<p style="text-align: right;">54</p> <p>1 <b>A For the most part, I would not be personally</b>  2 <b>involved. Judy would propose an AWP; and for the</b>  3 <b>most part, I would have approved it.</b>  4 Q Was there anyone else that was involved in  5 decisions to set AWP's for Roxane's multisource  6 products?  7 <b>A Not normally.</b>  8 Q What is your understanding of what an  9 average wholesale price or AWP is?  10 <b>A It's not what it says it is. It's not an</b>  11 <b>average wholesale price.</b>  12 <b>It is a misnomer or an arbitrary term that</b>  13 <b>is used in the generic business to report yourself</b>  14 <b>to the database companies that you are marketing a</b>  15 <b>generic product.</b>  16 Q So did Roxane report its AWP's to pricing  17 compendia?  18 <b>A Yes, they did.</b>  19 Q Were you aware that starting in the  20 1998-1999 time frame, there were investigations  21 into inflated AWP's?  22 <b>A Yes.</b></p>	<p style="text-align: right;">56</p> <p>1 <b>retained by Ben Venue.</b>  2 Q Do you know if he represented Roxane?  3 <b>A I don't recall specifically whether he</b>  4 <b>worked for Roxane as well.</b>  5 Q Call your attention to the first paragraph.  6 MS. RIVERA: And let me just object for a  7 second. I'm going to object to the relevance of  8 this.  9 Bedford and Ben Venue are not defendants in  10 this case, so investigations into Ben Venue and  11 Bedford's practices are not relevant to this case.  12 And this deposition was not noticed for  13 Mr. Russillo's employment at Bedford Labs.  14 MR. FAUCI: I'm going to request that  15 counsel refrain from making speaking objections. I  16 don't think that's a proper objection in this  17 deposition.  18 Object for the record.  19 MS. RIVERA: That's what I'm doing.  20 MR. FAUCI: Okay. But I think "objection"  21 will suffice.  22 Q Mr. Coval writes in the first paragraph, "We</p>
<p style="text-align: right;">55</p> <p>1 MS. RIVERA: Object to form.  2 THE WITNESS: Yes, I was.  3 MR. FAUCI: I'm going to show you a document  4 the court reporter will mark as Exhibit 5.  5 (Exhibit Russillo 005 is marked.)  6 Q BY MR. FAUCI: Please take a moment to  7 familiarize yourself with it. Continue to  8 familiarize yourself with it as necessary, but I'm  9 going to ask if you understand that this is a  10 letter from a Paul Coval, counsel for Bedford  11 Laboratories, that's addressed to the Honorable Tom  12 Bliley, Chairman, Committee on Commerce, US House  13 of Representatives.  14 Do you see that?  15 <b>A Yes, I do.</b>  16 Q And do you see that you're copied on this  17 letter?  18 <b>A Yes, I do.</b>  19 Q Who is Paul Coval?  20 <b>A Paul Coval, to the best of my recollection,</b>  21 <b>was an attorney based in Columbus, who was an</b>  22 <b>outside -- part of an outside firm that was</b></p>	<p style="text-align: right;">57</p> <p>1 are writing as counsel on behalf of Bedford  2 Laboratories in response to your letter of July 19,  3 1999, to Thomas Russillo."  4 Do you see that?  5 <b>A Yes, I do.</b>  6 Q And it says that, "in which you request  7 certain information and documents regarding the  8 pricing of Bedford's products generally and  9 specifically its pricing for the generic  10 product" -- I'm going to have trouble pronouncing  11 this -- "Leucovorin."  12 Do you see that?  13 <b>A Yes, I do.</b>  14 Q Do you recall receiving a letter from  15 Councilman Bliley about Bedford's pricing?  16 MS. RIVERA: Object to form.  17 THE WITNESS: I generally recall there was a  18 letter. I don't recall the content of the letter.  19 Q BY MR. FAUCI: Did you receive letters from  20 the chair of the Committee on Commerce frequently?  21 <b>A No.</b>  22 Q Do you recall that counsel drafted a letter</p>

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25 (Pages 94 to 97)

<p style="text-align: right;">94</p> <p>1 Q Turn your attention to Step 3, the paragraph</p> <p>2 starting, "Product manager to coordinate following</p> <p>3 departments/personnel."</p> <p>4 Do you see that?</p> <p>5 <b>A No, I don't.</b></p> <p>6 Q Do you see Step 3?</p> <p>7 <b>A I see Step 3. Okay, the second?</b></p> <p>8 Q The second bolded --</p> <p>9 <b>A Yeah, I have it.</b></p> <p>10 Q And then for an AWP change, do you see that</p> <p>11 Mr. Feldman, executive director, trade and pharmacy</p> <p>12 affairs, is to compose a letter to the pricing</p> <p>13 compendia?</p> <p>14 <b>A Yes.</b></p> <p>15 Q Is that consistent with your recollection</p> <p>16 that Mr. Feldman would notify the pricing compendia</p> <p>17 when Roxane changed its AWP?</p> <p>18 <b>A It all depends on the time. This is a</b></p> <p>19 <b>procedure -- I don't know if it was ever</b></p> <p>20 <b>implemented or not.</b></p> <p>21 <b>In that 2000, 2001 time frame, Feldman was</b></p> <p>22 <b>there, so I guess he could have been doing that.</b></p>	<p style="text-align: right;">96</p> <p>1 Only AWP is to be listed for multisource, as WAC is</p> <p>2 not for general publication."</p> <p>3 Does this refresh your recollection as to</p> <p>4 whether or not Roxane published its WAC prices?</p> <p>5 <b>A No, it doesn't.</b></p> <p>6 Q You just don't know one way or the other?</p> <p>7 <b>A I don't know whether this procedure was ever</b></p> <p>8 <b>implemented or not.</b></p> <p>9 Q My question is do you -- does this document</p> <p>10 refresh your recollection as to whether in fact</p> <p>11 Roxane reported its WAC pricing?</p> <p>12 <b>A It doesn't.</b></p> <p>13 Q In your opinion, would it be appropriate for</p> <p>14 Roxane to lower its WACs on a product but not</p> <p>15 report the new WAC to the pricing compendia?</p> <p>16 MS. RIVERA: Object to form.</p> <p>17 THE WITNESS: I don't know whether it's</p> <p>18 appropriate or not. I don't think there was any</p> <p>19 requirement to report any WAC prices to the pricing</p> <p>20 compendia.</p> <p>21 MR. FAUCI: I'm going to show you a document</p> <p>22 marked Exhibit 12.</p>
<p style="text-align: right;">95</p> <p>1 <b>Subsequent to that, Judy was in charge of that.</b></p> <p>2 Q Was it your understanding that if Roxane</p> <p>3 changed the AWP, that change would be reported to</p> <p>4 the pricing compendia?</p> <p>5 <b>A Yes.</b></p> <p>6 Q If a WAC changed, do you know if Roxane</p> <p>7 would notify the pricing compendia?</p> <p>8 <b>A I'm not sure whether we were reporting WACs</b></p> <p>9 <b>or not.</b></p> <p>10 Q Can you think of a reason why you wouldn't</p> <p>11 be reporting WACs?</p> <p>12 <b>A I don't believe there was any requirement to</b></p> <p>13 <b>report WACs.</b></p> <p>14 Q Skip ahead to Step 5. It's two pages</p> <p>15 turned, where it says, "Create gold sheet for</p> <p>16 product if AWP or NWDA changes."</p> <p>17 Do you see that?</p> <p>18 <b>A Yes.</b></p> <p>19 Q And then it says, "Gold sheet standard form</p> <p>20 (Roxane) is to be used to notify internal personnel</p> <p>21 of price changes, packaging changes, as well as</p> <p>22 additions and deletions to product line. Note:</p>	<p style="text-align: right;">97</p> <p>1 (Exhibit Russillo 012 is marked.)</p> <p>2 Q BY MR. FAUCI: It's a September 22, 2000,</p> <p>3 e-mail from Joe Puma. And it's attaching a file</p> <p>4 called "Reorg_PAC_2.ppt," also a document labeled</p> <p>5 "091800 minutes final.doc."</p> <p>6 Take a moment to familiarize yourself with</p> <p>7 Exhibit 12 and tell me when you're ready for</p> <p>8 questions.</p> <p>9 <b>A Okay.</b></p> <p>10 Q Who's Joe Puma?</p> <p>11 <b>A I don't know.</b></p> <p>12 Q He writes on the first page of this, the</p> <p>13 e-mail transmitting the attachment, "On the</p> <p>14 PowerPoint presentation, slide 6, please correct</p> <p>15 the spelling for Tom Russillo.</p> <p>16 "You may also want to include that in</p> <p>17 addition to WAC changes (not always increases), Tom</p> <p>18 Russillo in coordination with Judy Waterer (Assoc.</p> <p>19 Director, Multisource Products) also review and</p> <p>20 recommend AWP changes for the line."</p> <p>21 Do you see that?</p> <p>22 <b>A Yes.</b></p>

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<p style="text-align: right;">98</p> <p>1 Q Is it consistent with your recollection that</p> <p>2 you and Mr. Waterer reviewed and recommended AWP</p> <p>3 changes for the multisource line of products?</p> <p>4 <b>A I don't recall doing that. No.</b></p> <p>5 Q You don't recall doing what?</p> <p>6 <b>A Recommending AWP changes.</b></p> <p>7 Q Do you recall approving AWP changes?</p> <p>8 <b>A I do.</b></p> <p>9 Q Did you ever ask anyone at Boehringer</p> <p>10 Ingelheim to sign off on an AWP change that you</p> <p>11 were involved with?</p> <p>12 MS. RIVERA: Object to form.</p> <p>13 THE WITNESS: There would have been -- it</p> <p>14 would have been at my discretion. I would have</p> <p>15 asked Werner Gerstenberg, if I thought there was a</p> <p>16 sensitive AWP issue.</p> <p>17 Q BY MR. FAUCI: Is there anyone else you</p> <p>18 would have talked to about a sensitive AWP issue?</p> <p>19 <b>A No.</b></p> <p>20 Q What would make an AWP issue sensitive?</p> <p>21 <b>A Well, at this time --</b></p> <p>22 MS. RIVERA: Hold on. Object to form.</p>	<p style="text-align: right;">100</p> <p>1 team?</p> <p>2 <b>A It's -- it was rolled into the PAC, I</b></p> <p>3 <b>believe, at this point in time.</b></p> <p>4 Q And the permanent members: Do you see</p> <p>5 those?</p> <p>6 <b>A Yes, I do.</b></p> <p>7 Q "Ciarelli, Diez, Ellexson, Hankins, King,</p> <p>8 Powers, Sykora, Terrillion, Marketing Controller</p> <p>9 Elizabeth Cochran."</p> <p>10 <b>A Yes.</b></p> <p>11 Q Who are each of those people, to the best of</p> <p>12 your recollection? Which companies did they work</p> <p>13 for?</p> <p>14 I can make it easier. Did any of those</p> <p>15 people work for Roxane Laboratories post-June 2000?</p> <p>16 <b>A I don't know for sure. John Powers and Bob</b></p> <p>17 <b>Sykora were Roxane -- I think were Roxane</b></p> <p>18 <b>employees.</b></p> <p>19 Q Were the rest of those BIPI employees?</p> <p>20 <b>A They were on the brand side. I would</b></p> <p>21 <b>imagine they were BIPI.</b></p> <p>22 Q The third bullet point down, it says,</p>
<p style="text-align: right;">99</p> <p>1 THE WITNESS: At this point in time, I was</p> <p>2 very sensitive to the AWP litigation that was</p> <p>3 floating around.</p> <p>4 Q BY MR. FAUCI: So as of the late 1990s, you</p> <p>5 were aware that there was investigations into</p> <p>6 inflated AWPs?</p> <p>7 <b>A Yes, I was.</b></p> <p>8 Q Let's turn to the first page of the exhibit,</p> <p>9 of the attachment, where it says, "Impact of June</p> <p>10 2000, BU Reorganization on PAC Process."</p> <p>11 <b>A Yes.</b></p> <p>12 Q Was there a reorganization of the business</p> <p>13 unit in or around June 2000?</p> <p>14 <b>A Yes, there was.</b></p> <p>15 Q What was the result of that?</p> <p>16 <b>A The result of that was, as best I recall,</b></p> <p>17 <b>the pricing decision committees, as you've shown me</b></p> <p>18 <b>in the previous things, were implemented on the</b></p> <p>19 <b>brand side, and we were left pretty much on the</b></p> <p>20 <b>side to do our own thing, on the multisource side.</b></p> <p>21 Q Turn to page 4 of the document, where it</p> <p>22 says "PTC Team Post-June 2000." What is the PTC</p>	<p style="text-align: right;">101</p> <p>1 "G. Ciarelli, H. Diez, and J. King to collaborate</p> <p>2 to provide leadership to team and make final calls</p> <p>3 on difficult decisions."</p> <p>4 <b>A Yes.</b></p> <p>5 Q "If a decision cannot be made, the issues</p> <p>6 are brought to S. Berkle."</p> <p>7 <b>A Yes.</b></p> <p>8 Q Do you see that?</p> <p>9 <b>A Yes.</b></p> <p>10 Q Would those difficult decisions have to do</p> <p>11 with Roxane multisource products?</p> <p>12 <b>A No.</b></p> <p>13 Q What about Roxane's branded generic</p> <p>14 products?</p> <p>15 MS. RIVERA: Object to form, foundation.</p> <p>16 THE WITNESS: I believe they could. I don't</p> <p>17 know how they handled those.</p> <p>18 Q BY MR. FAUCI: Page 6 of the same exhibit</p> <p>19 says "PTC and Multisource." Do you see that?</p> <p>20 <b>A Yes.</b></p> <p>21 Q "Multisource is addressed by the PTC team</p> <p>22 only when administrative, legal, and government</p>

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<p style="text-align: right;">146</p> <p>1 issues around AWP's.</p> <p>2 Q BY MR. FAUCI: Did it give you pause to</p> <p>3 approve an AWP increase at this time?</p> <p>4 MS. RIVERA: Object to form.</p> <p>5 THE WITNESS: You know, I don't -- I can't</p> <p>6 remember what I was thinking back in 1999. All I</p> <p>7 did -- all I do remember is that there were issues</p> <p>8 around AWP, and it was my job to make certain that</p> <p>9 what I did was both legal and appropriate.</p> <p>10 Q BY MR. FAUCI: It says below in that e-mail,</p> <p>11 the last line, "Gregg is in agreement." Who's</p> <p>12 Gregg?</p> <p>13 A I believe that would be Gregg Ciarelli,</p> <p>14 because he's copied on this e-mail.</p> <p>15 Q Would you have sought out Gregg's approval</p> <p>16 or Gregg's agreement before you did this?</p> <p>17 A No, I would not.</p> <p>18 Q Why would you have said, "Gregg is in</p> <p>19 agreement"?</p> <p>20 A Because he would be processing the changes</p> <p>21 that were being proposed here.</p> <p>22 Q I understand that. But why would you be</p>	<p style="text-align: right;">148</p> <p>1 go to a pricing committee?</p> <p>2 A I was reminding him that I had the authority</p> <p>3 to make these changes and that they didn't need to</p> <p>4 go through the PAC prices.</p> <p>5 Q Who were you reminding?</p> <p>6 A Gregg.</p> <p>7 Q Gregg? The e-mail's to Richard Feldman and</p> <p>8 Judy Waterer, and it's copied to Gregg Ciarelli.</p> <p>9 A That's right. You've shown me all the</p> <p>10 e-mails. There was a lot of discussion going on at</p> <p>11 this point in time about how prices were being set</p> <p>12 up by the various divisions.</p> <p>13 I was just reminding people here that</p> <p>14 multisource was not part of that PAC, and we had</p> <p>15 the authority -- I had the authority to agree to</p> <p>16 the price change.</p> <p>17 Q So you're saying that Gregg is in agreement</p> <p>18 that you had authority to make this price change?</p> <p>19 A That's right.</p> <p>20 Q Why didn't this go to a pricing committee?</p> <p>21 A Because there was not a pricing committee</p> <p>22 for multisource products.</p>
<p style="text-align: right;">147</p> <p>1 concerned that he would agree with the decision to</p> <p>2 raise the AWP's? Why would his agreement matter?</p> <p>3 MS. RIVERA: Object to form.</p> <p>4 THE WITNESS: It isn't necessarily</p> <p>5 agreement. I don't know. I don't remember at the</p> <p>6 time why I said that.</p> <p>7 Q BY MR. FAUCI: It's a three-line e-mail, and</p> <p>8 you're authorizing the increase of AWP's, and you're</p> <p>9 saying Gregg is in agreement; is that correct?</p> <p>10 A Yeah.</p> <p>11 MS. RIVERA: Object to form. You're</p> <p>12 skipping a whole sentence in the e-mail, Jeff.</p> <p>13 MR. FAUCI: I understand that.</p> <p>14 Q Let's just read the whole thing. "Go ahead</p> <p>15 and implement the \$131.08 and \$144.18 AWP change as</p> <p>16 well as the new pricing for Alprazolam Intensol.</p> <p>17 "Price changes for M/S, except in certain</p> <p>18 cases which will be more clearly defined later, do</p> <p>19 not need to go to a pricing committee. Gregg is in</p> <p>20 agreement. Tom."</p> <p>21 A Right.</p> <p>22 Q What does it mean that prices didn't need to</p>	<p style="text-align: right;">149</p> <p>1 Q There had been an effort or an exploration</p> <p>2 of whether it made sense to set up a pricing</p> <p>3 committee. We went through those documents.</p> <p>4 Do you remember that?</p> <p>5 A Yes, I do.</p> <p>6 Q Do you recall why a pricing committee wasn't</p> <p>7 set up?</p> <p>8 A I think the nature of the business was so</p> <p>9 different from the branded business that coming up</p> <p>10 with a common committee was just not possible.</p> <p>11 Q Let's look at Exhibit 22. I know we're</p> <p>12 approaching lunch.</p> <p>13 (Exhibit Russillo 022 is marked.)</p> <p>14 MS. RIVERA: The more we can get through,</p> <p>15 the better.</p> <p>16 Q BY MR. FAUCI: This is a September 8, 1999,</p> <p>17 e-mail from Lesli Paoletti to Tom Russillo,</p> <p>18 "Subject: Azathioprine/Alprazolam Pricing."</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q Ms. Paoletti writes, "Tom, by your</p> <p>22 signature, please confirm executive pricing</p>

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<p style="text-align: right;">166</p> <p>1 <b>documentation would consist of.</b></p> <p>2 Q And so as long as she showed you that the</p> <p>3 AWP change was necessary to make Roxane's AWP's as</p> <p>4 high as its competitors, that would be enough for</p> <p>5 you to approve it?</p> <p>6 <b>A In general, that would probably be enough.</b></p> <p>7 Q Were you concerned about the government's</p> <p>8 investigations into AWP inflations?</p> <p>9 <b>A Absolutely.</b></p> <p>10 Q Let's look at the top e-mail from</p> <p>11 Ms. Waterer. She says, "Bob, got the information</p> <p>12 yet? Discussed it with Tom; and depending on the</p> <p>13 strength of the customer information you can pull</p> <p>14 together, he'll support it. No guarantees of</p> <p>15 getting it through."</p> <p>16 Do you see that?</p> <p>17 <b>A Yes, I do.</b></p> <p>18 Q If you were -- if it was your decision as to</p> <p>19 whether or not to approve it, why wouldn't there be</p> <p>20 any guarantee of getting it through?</p> <p>21 <b>A I don't know what she was referring to when</b></p> <p>22 <b>she said that. She could have been referring no</b></p>	<p style="text-align: right;">168</p> <p>1 <b>A I don't remember.</b></p> <p>2 Q One way or the other?</p> <p>3 <b>A I don't remember.</b></p> <p>4 Q Did you talk to anyone in the legal</p> <p>5 department about this?</p> <p>6 <b>A I don't recall the incident.</b></p> <p>7 Q Well, you said you were aware that AWP</p> <p>8 inflations were being investigated by the</p> <p>9 government; is that correct?</p> <p>10 <b>A Yes, I did.</b></p> <p>11 Q And the incident we're talking about is a</p> <p>12 decision to raise the AWP's on Roxane's furosemide</p> <p>13 products; correct?</p> <p>14 <b>A Yes.</b></p> <p>15 Q Do you think it's likely that you would have</p> <p>16 discussed this with people in the legal department?</p> <p>17 MS. RIVERA: Object to form.</p> <p>18 THE WITNESS: I can't tell you that. I</p> <p>19 don't know.</p> <p>20 Q BY MR. FAUCI: Let's look at Exhibit 25.</p> <p>21 (Exhibit Russillo 025 is marked.)</p> <p>22 Q BY MR. FAUCI: This is a series of e-mails</p>
<p style="text-align: right;">167</p> <p>1 <b>guarantee that I would approve it, no guarantee</b></p> <p>2 <b>that documentation would be considered adequate by</b></p> <p>3 <b>me. There's a whole different bunch of things.</b></p> <p>4 Q Could she have meant that there was no</p> <p>5 guarantee that you'd be able to convince higher-ups</p> <p>6 to approve this? "This" being the AWP increase.</p> <p>7 MS. RIVERA: Object to form.</p> <p>8 THE WITNESS: She may not have been sure who</p> <p>9 I would talk to, if anyone, about it.</p> <p>10 Q BY MR. FAUCI: But it's your testimony that</p> <p>11 you would not have needed to talk to anybody to</p> <p>12 improve this -- approve this?</p> <p>13 <b>A In this particular case, depending on what</b></p> <p>14 <b>was going on, I probably would not have. I think</b></p> <p>15 <b>it was my testimony before that if I thought it was</b></p> <p>16 <b>significant, I might have reviewed it with Werner</b></p> <p>17 <b>Gerstenberg.</b></p> <p>18 Q Do you have any recollection as to whether</p> <p>19 or not you reviewed an AWP increase in or around</p> <p>20 July 2000 with Werner Gerstenberg?</p> <p>21 <b>A No, I don't. I don't remember.</b></p> <p>22 Q You don't recall?</p>	<p style="text-align: right;">169</p> <p>1 dated July 7, 2000. Subject is "Cardinal Counter</p> <p>2 and Furosemide."</p> <p>3 I'm going to direct your attention to the</p> <p>4 bottom e-mail from the -- or the middle e-mail from</p> <p>5 Mr. Sykora to Judy Waterer. And it's copied to</p> <p>6 several people, including yourself.</p> <p>7 Do you see that?</p> <p>8 <b>A Yes.</b></p> <p>9 Q Actually, let's look at the e-mail below,</p> <p>10 from Ms. Waterer, sent at 11:10 a.m, paragraph</p> <p>11 no. 2. Ms. Waterer writes, "I agree" --</p> <p>12 MS. RIVERA: Sorry, Jeff. I think he needs</p> <p>13 a minute to look over the whole thing.</p> <p>14 MR. FAUCI: Sure. Why don't you just tell</p> <p>15 me when you're ready for questions about</p> <p>16 Exhibit 25.</p> <p>17 MS. RIVERA: Thank you.</p> <p>18 THE WITNESS: Okay.</p> <p>19 Q BY MR. FAUCI: I'm looking at the e-mail</p> <p>20 from Ms. Waterer as it spills over to the second</p> <p>21 page, paragraph no. 2.</p> <p>22 Ms. Waterer writes, "I agree that time is</p>

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<p style="text-align: right;">170</p> <p>1 ripe on furosemide." Do you see that?</p> <p>2 <b>A Yes, I do.</b></p> <p>3 Q A few lines down, she says, "Tom is aware of</p> <p>4 the AWP situation and will support the increase</p> <p>5 provided we have solid supporting information. The</p> <p>6 change will be submitted as soon as we receive the</p> <p>7 necessary information from you."</p> <p>8 What do you understand her to mean when you</p> <p>9 say -- when she says that, "Tom will support the</p> <p>10 increase"?</p> <p>11 <b>A I will approve it.</b></p> <p>12 Q So just like champion equaled approved,</p> <p>13 support equals approved as well?</p> <p>14 <b>A Exactly. She's reiterating the same thing</b></p> <p>15 <b>she said in the previous e-mail two days ago.</b></p> <p>16 Q And so by support the increase, she means</p> <p>17 that you'll approve it?</p> <p>18 <b>A Yes.</b></p> <p>19 Q Uh-huh. Let's look at the e-mail from Bob</p> <p>20 Sykora on the next page -- the first page. I'm</p> <p>21 looking at paragraph 2, third line down.</p> <p>22 Mr. Sykora writes, "I realize there is</p>	<p style="text-align: right;">172</p> <p>1 brother wants to punish, they will, so why not make</p> <p>2 some money meanwhile."</p> <p>3 Do you see that?</p> <p>4 <b>A Yes, I do.</b></p> <p>5 Q What do you understand Mr. Sykora to be</p> <p>6 referring to when he writes "big brother"?</p> <p>7 MS. RIVERA: Object to form and foundation.</p> <p>8 THE WITNESS: I don't know for sure. I can</p> <p>9 only speculate who he meant.</p> <p>10 Q BY MR. FAUCI: Have you ever heard of the</p> <p>11 government referred to as big brother?</p> <p>12 <b>A Yes.</b></p> <p>13 Q And you know the government was concerned</p> <p>14 about inflated AWP's?</p> <p>15 <b>A Yes.</b></p> <p>16 Q As early as 1999?</p> <p>17 <b>A Yes, I do.</b></p> <p>18 Q Can you think of any reason why Boehringer</p> <p>19 Ingelheim would be upset with Roxane for raising</p> <p>20 its AWP's on furosemide?</p> <p>21 MS. RIVERA: Object to form.</p> <p>22 THE WITNESS: What do you mean by Boehringer</p>
<p style="text-align: right;">171</p> <p>1 political pressure on AWP currently, but it</p> <p>2 shouldn't run our business." Do you see that?</p> <p>3 <b>A Yes, I do.</b></p> <p>4 Q Is the political pressure on AWP the fact</p> <p>5 that government was investigating AWP inflations?</p> <p>6 MS. RIVERA: Object to form. Calls for</p> <p>7 speculation.</p> <p>8 THE WITNESS: Would you repeat that, please?</p> <p>9 MR. FAUCI: Let me rephrase that.</p> <p>10 Q Do you see that you're copied on</p> <p>11 Mr. Sykora's e-mail?</p> <p>12 <b>A Yes, I do.</b></p> <p>13 Q As you read what he writes, do you</p> <p>14 understand -- what do you understand him to mean by</p> <p>15 political pressure on AWP?</p> <p>16 MS. RIVERA: Object to form.</p> <p>17 THE WITNESS: I think he is referring to the</p> <p>18 fact that he is aware that there are lawsuits</p> <p>19 pending on AWP's and there are perceptions that AWP's</p> <p>20 have been used incorrectly in the industry.</p> <p>21 Q BY MR. FAUCI: He goes on to write, "Logic</p> <p>22 dictates that no matter what the AWP is, if big</p>	<p style="text-align: right;">173</p> <p>1 Ingelheim?</p> <p>2 Q BY MR. FAUCI: BIC and/or BIPI.</p> <p>3 MS. RIVERA: Object to form and foundation.</p> <p>4 THE WITNESS: Yeah. You mean that the</p> <p>5 company would be upset?</p> <p>6 Q BY MR. FAUCI: Yeah. The question is can</p> <p>7 you think of any reason why BIC and/or BIPI would</p> <p>8 punish Roxane for raising its AWP's?</p> <p>9 MS. RIVERA: Object to form and foundation.</p> <p>10 THE WITNESS: I don't know whether in this</p> <p>11 case the AWP was actually raised or not. All I</p> <p>12 know is that I would have reviewed it. If I</p> <p>13 thought it was justified, I would have approved it.</p> <p>14 And I believe that the people you're</p> <p>15 referring to, BIC or BIPI or whomever, would not</p> <p>16 have had any objection. I wouldn't have signed off</p> <p>17 on it if I thought there was going to be a problem.</p> <p>18 Q BY MR. FAUCI: You wouldn't have signed off</p> <p>19 on it without their approving?</p> <p>20 <b>A I wouldn't have signed off on it if I</b></p> <p>21 <b>thought it was going to be a problem.</b></p> <p>22 <b>If I was concerned about it, I would have</b></p>

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<p style="text-align: right;">174</p> <p>1 called Werner Gerstenberg and told him what I</p> <p>2 thought was going on and what I thought should be</p> <p>3 done. And then he would have either agreed or</p> <p>4 disagreed.</p> <p>5 Q So do you think you consulted with Werner</p> <p>6 Gerstenberg about the decision as to whether or not</p> <p>7 to raise AWP's for Roxane?</p> <p>8 A Don't recall.</p> <p>9 Q For furosemide, I apologize.</p> <p>10 A I don't recall.</p> <p>11 Q In the top e-mail from Ms. Waterer, the</p> <p>12 second paragraph down, she writes, "You've</p> <p>13 indicated that AWP on furosemide is critical now</p> <p>14 and that we'd have real business opportunities if</p> <p>15 we could change it. As you've been informed, Tom</p> <p>16 is prepared to take furosemide up the line."</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Who would you be taking furosemide up the</p> <p>20 line to?</p> <p>21 A I believe she's referring to that if I</p> <p>22 needed to, I would take it up the line.</p>	<p style="text-align: right;">176</p> <p>1 A There were thousands of Roxane employees --</p> <p>2 oh, in Connecticut. Sorry.</p> <p>3 Q Based in Connecticut.</p> <p>4 A Roxane actual employees. Let me think about</p> <p>5 that. There actually may have been a couple.</p> <p>6 We had a number of situations where people</p> <p>7 worked for a subsidiary but were officed other</p> <p>8 places, so there may have been. I can't think</p> <p>9 right now of any.</p> <p>10 Q Can't think of any off the top of your head?</p> <p>11 A Not specifically, no.</p> <p>12 Q I'm going to show you Exhibit 26.</p> <p>13 (Exhibit Russillo 026 is marked.)</p> <p>14 Q BY MR. FAUCI: Take a moment to familiarize</p> <p>15 yourself with this e-mail, but my questions will</p> <p>16 just be focusing on the top couple lines.</p> <p>17 A Okay.</p> <p>18 Q The e-mail I'm going to focus your attention</p> <p>19 on is from Tom Russillo, dated July 7, to Bob</p> <p>20 Sykora, Judy Waterer, Richard Feldman.</p> <p>21 Do you see that in this e-mail you were</p> <p>22 responding to the e-mail we just discussed in</p>
<p style="text-align: right;">175</p> <p>1 Q To who?</p> <p>2 A Werner Gerstenberg.</p> <p>3 Q Anyone else?</p> <p>4 A No.</p> <p>5 Q Where is Werner Gerstenberg based?</p> <p>6 A Connecticut.</p> <p>7 Q What was his job function?</p> <p>8 A He was the CEO of -- now, let's take it in</p> <p>9 respect. In this particular case, he would have</p> <p>10 been acting as the president of Roxane.</p> <p>11 Q Was he also the president of other</p> <p>12 Boehringer Ingelheim companies?</p> <p>13 A Yes, he was.</p> <p>14 Q Which companies, to your knowledge?</p> <p>15 A I believe he was the president of BIC.</p> <p>16 Q Which was the parent company based in</p> <p>17 Connecticut?</p> <p>18 A Yes.</p> <p>19 Q Can you think of any other Roxane employees</p> <p>20 that were based in Connecticut?</p> <p>21 A Can I think of any?</p> <p>22 Q Yeah.</p>	<p style="text-align: right;">177</p> <p>1 Exhibit 25, where Mr. Sykora was discussing the AWP</p> <p>2 increase for furosemide?</p> <p>3 A It would appear that's correct. Yes.</p> <p>4 Q Can you read your response?</p> <p>5 A "Bob, I assure you it's real. To get the</p> <p>6 approval we need from Connecticut, though, we need</p> <p>7 some hard info. Don't shoot the messenger. Judy</p> <p>8 is only doing what I asked her to do. Rich can</p> <p>9 assure you of the mood in BI."</p> <p>10 Q Does "Connecticut" mean Boehringer</p> <p>11 Ingelheim?</p> <p>12 MS. RIVERA: Object to form.</p> <p>13 THE WITNESS: It could mean Boehringer</p> <p>14 Ingelheim. I suspect it does here.</p> <p>15 Q BY MR. FAUCI: What approval would you need</p> <p>16 from Boehringer Ingelheim?</p> <p>17 MS. RIVERA: Object to form.</p> <p>18 THE WITNESS: I believe Judy was under the</p> <p>19 impression that I needed approval, and I may have</p> <p>20 told her that so that she wouldn't just be</p> <p>21 bombarding me with requests.</p> <p>22 Q BY MR. FAUCI: Just to be clear, who wrote</p>

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<p style="text-align: right;">178</p> <p>1 this e-mail I asked you to read?</p> <p>2 <b>A I wrote it.</b></p> <p>3 Q Did you need approval from Boehringer</p> <p>4 Ingelheim to make a decision to raise the AWP's on</p> <p>5 furosemide?</p> <p>6 MS. RIVERA: Object to form.</p> <p>7 THE WITNESS: It would have -- as I've told</p> <p>8 you before, it would have depended on the</p> <p>9 situation.</p> <p>10 I would have evaluated all the data and made</p> <p>11 the decision. If I needed to go to Connecticut, in</p> <p>12 this case to Werner Gerstenberg, I would.</p> <p>13 Q BY MR. FAUCI: Well, we're talking about</p> <p>14 this situation, which is a proposed increase on</p> <p>15 AWP's for furosemide in July 2000.</p> <p>16 <b>A Uh-huh.</b></p> <p>17 Q And you write, "To get the approval we need</p> <p>18 from Connecticut, though, we need some hard info."</p> <p>19 Did you need approval from Boehringer</p> <p>20 Ingelheim?</p> <p>21 MS. RIVERA: Object to form.</p> <p>22 THE WITNESS: I did not need approval from</p>	<p style="text-align: right;">180</p> <p>1 furosemide as sensitive?</p> <p>2 MS. RIVERA: Object to form.</p> <p>3 THE WITNESS: I regarded any decision to</p> <p>4 raise AWP's as needing to be justified.</p> <p>5 Q BY MR. FAUCI: You write, "Rich can assure</p> <p>6 you of the mood in BI." Do you see that?</p> <p>7 <b>A Yes.</b></p> <p>8 Q Is "Rich" Richard Feldman?</p> <p>9 <b>A I believe that's who I'm referring to. Yes.</b></p> <p>10 Q What do you mean, the mood in BI?</p> <p>11 <b>A The mood at Boehringer Ingelheim was the</b></p> <p>12 <b>same as mine. It was very sensitive to AWP</b></p> <p>13 <b>changes.</b></p> <p>14 Q Because of its awareness of the lawsuits</p> <p>15 that had been filed?</p> <p>16 <b>A Yes.</b></p> <p>17 Q You can put that aside. I'm going to show</p> <p>18 you an exhibit marked Exhibit 27.</p> <p>19 (Exhibit Russillo 027 is marked.)</p> <p>20 Q BY MR. FAUCI: This is a somewhat lengthy</p> <p>21 document. Take a moment to review it, and just</p> <p>22 indicate to me when you're ready for a question.</p>
<p style="text-align: right;">179</p> <p>1 Boehringer Ingelheim in Connecticut, unless I felt</p> <p>2 there were circumstances that I needed to review</p> <p>3 with Werner Gerstenberg.</p> <p>4 Q BY MR. FAUCI: And do you recall if you felt</p> <p>5 as if there were circumstances you needed to review</p> <p>6 that related to the AWP increase for furosemide?</p> <p>7 <b>A I don't recall at this point in time,</b></p> <p>8 <b>because I didn't have the data yet.</b></p> <p>9 Q You just have no recollection one way or the</p> <p>10 other?</p> <p>11 <b>A No. I'd have to see the next series of</b></p> <p>12 <b>e-mails and information that would have passed.</b></p> <p>13 Q So it's possible that depending on what the</p> <p>14 sales justification looked like, you might have</p> <p>15 felt the need to go to Boehringer Ingelheim; is</p> <p>16 that correct?</p> <p>17 <b>A It is possible.</b></p> <p>18 MS. RIVERA: Object to form.</p> <p>19 Q BY MR. FAUCI: And you don't know one way or</p> <p>20 another whether you did?</p> <p>21 <b>A No, I don't.</b></p> <p>22 Q Did you regard the decision to raise AWP's on</p>	<p style="text-align: right;">181</p> <p>1 <b>A You want me to read all of this? Are we</b></p> <p>2 <b>planning to go through the whole thing, or --</b></p> <p>3 Q Just be familiar with it. I'll direct you</p> <p>4 where I'm going to ask my questions.</p> <p>5 <b>A All right. Then I'm going to have to read</b></p> <p>6 <b>all of it. Let's give it a try. Is this for me?</b></p> <p>7 MS. RIVERA: Yeah.</p> <p>8 Q BY MR. FAUCI: This document appears to be</p> <p>9 an e-mail sent from Robert Sykora to Judy Waterer,</p> <p>10 July 25, 2000. Several people are copied,</p> <p>11 including yourself.</p> <p>12 Subject is "Furosemide Tablet AWP</p> <p>13 Adjustment." Ms. Waterer writes, "Per your</p> <p>14 request, attached is a sales justification for an</p> <p>15 upward adjustment in the AWP's of furosemide</p> <p>16 tablets."</p> <p>17 Do you see that?</p> <p>18 <b>A Yes, I do.</b></p> <p>19 MS. RIVERA: Jeff, just to clarify, it's</p> <p>20 from Bob Sykora to Judy Waterer.</p> <p>21 MR. FAUCI: So Mr. Sykora writes that.</p> <p>22 MS. RIVERA: Yes.</p>

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<p style="text-align: right;">190</p> <p>1 <b>A I do.</b></p> <p>2 Q Did you have any concern with raising the</p> <p>3 AWP's for this product to a level more than 14 times</p> <p>4 higher than the average contract price?</p> <p>5 MS. RIVERA: Object to form.</p> <p>6 THE WITNESS: No, because it was the same</p> <p>7 AWP as Mylan.</p> <p>8 Q BY MR. FAUCI: So as long as Mylan's AWP was</p> <p>9 high, that high, it was okay?</p> <p>10 MS. RIVERA: Object to form.</p> <p>11 THE WITNESS: "High" is a word -- I don't</p> <p>12 use the word "high."</p> <p>13 Q BY MR. FAUCI: What if Mylan's AWP was \$300?</p> <p>14 MS. RIVERA: Jeff, you've got to let him</p> <p>15 finish his answer.</p> <p>16 Q BY MR. FAUCI: I apologize. Finish it.</p> <p>17 <b>A Okay. It doesn't matter what the number is.</b></p> <p>18 <b>We were trying to be competitive. If Mylan's AWP</b></p> <p>19 <b>is \$300, we probably would have raised it to \$300</b></p> <p>20 <b>to be competitive.</b></p> <p>21 Q Do you think it mattered to Medicaid and</p> <p>22 Medicare agencies what the AWP was?</p>	<p style="text-align: right;">192</p> <p>1 this is a decision that you would have taken to</p> <p>2 Werner Gerstenberg?</p> <p>3 <b>A Based on the data that I've seen here and</b></p> <p>4 <b>the quick review, I would say I probably did not.</b></p> <p>5 Q What was the type of decision you would take</p> <p>6 to him?</p> <p>7 <b>A If we were raising an AWP without adequate</b></p> <p>8 <b>justification, meaning I didn't see a competitor's</b></p> <p>9 <b>analysis that showed we were just blending in with</b></p> <p>10 <b>the rest.</b></p> <p>11 Q So with knowledge the AWP investigations</p> <p>12 were going on, and with knowledge that this AWP</p> <p>13 increase raised the AWP's to 14 times the average</p> <p>14 contract price, that would not have been reason for</p> <p>15 you to go to Mr. Gerstenberg and say, "Is this</p> <p>16 okay?"</p> <p>17 <b>A I can't answer your question exactly,</b></p> <p>18 <b>because this -- as you've seen from the e-mail</b></p> <p>19 <b>trails on this and others, there were a number of</b></p> <p>20 <b>these going on.</b></p> <p>21 <b>Once I had established Werner Gerstenberg's</b></p> <p>22 <b>position on this, I would have implemented it.</b></p>
<p style="text-align: right;">191</p> <p>1 MS. RIVERA: Object to form, foundation.</p> <p>2 Calls for speculation.</p> <p>3 Q BY MR. FAUCI: You're aware that Medicaid</p> <p>4 and Medicare relied on AWP's in setting their</p> <p>5 reimbursement. You've already testified to that;</p> <p>6 correct?</p> <p>7 <b>A I testified that they relied on a discount</b></p> <p>8 <b>from AWP for setting their reimbursement.</b></p> <p>9 Q Do you think it mattered to Medicare and</p> <p>10 Medicaid what the AWP's were?</p> <p>11 MS. RIVERA: Object to form and foundation.</p> <p>12 THE WITNESS: I suppose it mattered.</p> <p>13 Q BY MR. FAUCI: But it didn't matter to</p> <p>14 Roxane?</p> <p>15 <b>A Well, what mattered most --</b></p> <p>16 MS. RIVERA: Object to form.</p> <p>17 THE WITNESS: -- was their discount, not the</p> <p>18 AWP.</p> <p>19 Q BY MR. FAUCI: Now that we've looked a</p> <p>20 little bit into the actual decision to raise AWP's</p> <p>21 and your approval of that decision, does any of</p> <p>22 this refresh your recollection as to whether or not</p>	<p style="text-align: right;">193</p> <p>1 <b>So -- and I don't remember eight years ago how</b></p> <p>2 <b>concerned he was.</b></p> <p>3 <b>I might have brought it to him. I don't</b></p> <p>4 <b>think I did, because we've had others before that.</b></p> <p>5 <b>I knew where he stood.</b></p> <p>6 Q Would you have done this without feeling</p> <p>7 comfortable that Mr. Gerstenberg was okay with it?</p> <p>8 <b>A I can't tell you at the time. I don't know</b></p> <p>9 <b>whether I went to him or not.</b></p> <p>10 Q You said you knew where he stood. What do</p> <p>11 you mean by that?</p> <p>12 <b>A I knew that his position was if we were</b></p> <p>13 <b>meeting competitors, to stay competitive and that's</b></p> <p>14 <b>why we were raising the AWP, we would not be</b></p> <p>15 <b>perceived as taking advantage of the AWP.</b></p> <p>16 Q Where did you get that understanding of</p> <p>17 Mr. Gerstenberg's position from?</p> <p>18 <b>A Over many conversations with him.</b></p> <p>19 Q Did you have those -- was anybody else</p> <p>20 involved in those conversations?</p> <p>21 <b>A There may have been. I don't -- I don't</b></p> <p>22 <b>recall the specific conversations.</b></p>

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<p style="text-align: right;">198</p> <p>1 to Ven-a-Care asking questions as separate from</p> <p>2 their role as co-counsel on the DOJ's case.</p> <p>3 Go ahead.</p> <p>4 MR. FAUCI: Clarification. The objection is</p> <p>5 to Ven-a-Care asking questions in anything other</p> <p>6 than their capacity as co-counsel in the DOJ case?</p> <p>7 MS. RIVERA: In their capacity as -- like I</p> <p>8 said, it's our position that the DOJ is the only</p> <p>9 defendant in this case --</p> <p>10 MR. ANDERSON: Plaintiff.</p> <p>11 MS. RIVERA: Sorry. The only plaintiff in</p> <p>12 the case that has the right to ask questions. And</p> <p>13 so to the extent you are allowing Mr. Anderson to</p> <p>14 ask questions on behalf of the DOJ, that's okay.</p> <p>15 EXAMINATION</p> <p>16 BY MR. ANDERSON:</p> <p>17 Q All right. Good afternoon, Mr. Russillo.</p> <p>18 A Hi.</p> <p>19 Q I'm going to have some followup questions</p> <p>20 for you. I hope that it won't take too long, and</p> <p>21 we'll try to get out of here on time.</p> <p>22 I'm going to move from topic to topic, so</p>	<p style="text-align: right;">200</p> <p>1 A I was with Boehringer Ingelheim from</p> <p>2 November 1997 until December of 2004.</p> <p>3 Q And the November '97 date is the date of the</p> <p>4 acquisition of Ben Venue by a Boehringer company?</p> <p>5 A That's correct.</p> <p>6 Q How many years had you been with Ben Venue</p> <p>7 prior to that date?</p> <p>8 A From May of 1990 until November '97.</p> <p>9 Q What companies had you worked for in the</p> <p>10 drug industry prior to 1990?</p> <p>11 A Prior to that, I worked for Wyeth-Ayerst and</p> <p>12 Baxter International.</p> <p>13 Q In those roles, did you have</p> <p>14 responsibilities for the sales or marketing of</p> <p>15 generic drugs?</p> <p>16 A At Baxter, I did.</p> <p>17 Q What types of drugs, generally?</p> <p>18 A General generics. We were supplying</p> <p>19 hospitals in the Middle East, Africa, and parts of</p> <p>20 Asia.</p> <p>21 Q And it was a full product line, or was it a</p> <p>22 typical type of product?</p>
<p style="text-align: right;">199</p> <p>1 bear with me. I've got some big-picture questions</p> <p>2 initially.</p> <p>3 You've been in the pharmaceutical industry</p> <p>4 for many years; correct?</p> <p>5 A Yes, I have.</p> <p>6 Q To this day, you're in the pharmaceutical</p> <p>7 industry as a key executive at Watson; correct?</p> <p>8 A Yes.</p> <p>9 Q How many years total have you been in the</p> <p>10 drug industry?</p> <p>11 A 32.</p> <p>12 Q 32. And we've spent some time today talking</p> <p>13 about your roles at Ben Venue, which was a division</p> <p>14 of Boehringer; correct?</p> <p>15 MS. RIVERA: Object to form.</p> <p>16 THE WITNESS: It was an operating division,</p> <p>17 subsidiary, of BIC. Yeah, yeah.</p> <p>18 Q BY MR. ANDERSON: Boehringer Ingelheim</p> <p>19 Corporation is what you mean by BIC?</p> <p>20 A Yes.</p> <p>21 Q Okay. How many years were you with</p> <p>22 Boehringer Ingelheim companies?</p>	<p style="text-align: right;">201</p> <p>1 A It was a service line. We were not the</p> <p>2 manufacturers. It was a business we had. Hospital</p> <p>3 supply, generic drug supply.</p> <p>4 Q Okay. And you were overseas?</p> <p>5 A No. I was in Deerfield, Illinois.</p> <p>6 Q But you were responsible for some of these</p> <p>7 overseas operations?</p> <p>8 A No. I was based in Deerfield. I was not</p> <p>9 responsible for the overseas operations.</p> <p>10 Q Just the marketing? Okay.</p> <p>11 A I was responsible for a service division</p> <p>12 whose job it was to broker products for other</p> <p>13 companies, non-Baxter companies.</p> <p>14 Q Okay. Now, if I'm understanding your</p> <p>15 testimony correctly this morning, you've never been</p> <p>16 employed by Roxane; correct?</p> <p>17 A No. I've never been employed by Roxane.</p> <p>18 Q But you did have managerial control over</p> <p>19 Roxane's marketing; correct?</p> <p>20 A Roxane's multisource marketing.</p> <p>21 Q Multisource marketing. In the course of</p> <p>22 your employment with which company were you</p>

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<p style="text-align: right;">202</p> <p>1 responsible for Roxane's marketing?</p> <p>2 MS. RIVERA: Object to form.</p> <p>3 THE WITNESS: I'm not sure what you mean by</p> <p>4 which company.</p> <p>5 Q BY MR. ANDERSON: Which company did you feel</p> <p>6 like you were employed by when you were acting as</p> <p>7 the chief operating officer of Roxane's marketing?</p> <p>8 <b>A I was never chief operating officer. I</b></p> <p>9 <b>was -- in the Boehringer world, I was head of the</b></p> <p>10 <b>multisource business, and I was president of Ben</b></p> <p>11 <b>Venue Laboratories.</b></p> <p>12 Q Okay. I'll use that terminology then.</p> <p>13 As president of Ben Venue Laboratories and</p> <p>14 as the head of multisource marketing within the</p> <p>15 Boehringer companies, which company did you</p> <p>16 understand you were employed by?</p> <p>17 <b>A Ben Venue.</b></p> <p>18 Q Okay. Why were you, as an employee of Ben</p> <p>19 Venue, responsible for Roxane marketing?</p> <p>20 <b>A The decision to give me the responsibility</b></p> <p>21 <b>for Roxane marketing and sales was based on the</b></p> <p>22 <b>fact that Ben Venue had a very successful generic</b></p>	<p style="text-align: right;">204</p> <p>1 THE WITNESS: My boss was, and always was,</p> <p>2 Werner Gerstenberg. So yes, I was instructed to</p> <p>3 oversee that business under Werner Gerstenberg.</p> <p>4 Q BY MR. ANDERSON: And you reported to Werner</p> <p>5 Gerstenberg in his role as president and CEO of</p> <p>6 BIC, Boehringer Ingelheim Corporation; correct?</p> <p>7 <b>A Yes.</b></p> <p>8 Q Likewise, Mr. Berkle, as president of BIPI,</p> <p>9 Boehringer Ingelheim Pharmaceuticals, Incorporated,</p> <p>10 was reporting to Mr. Gerstenberg, president of BIC,</p> <p>11 with respect to the Roxane branded drugs; correct?</p> <p>12 <b>A I'm not sure.</b></p> <p>13 MS. RIVERA: Object to form.</p> <p>14 THE WITNESS: I'm not sure whether Shelly</p> <p>15 was president of BIPI or not.</p> <p>16 Q BY MR. ANDERSON: Okay.</p> <p>17 <b>A He was head of the business unit Ethical</b></p> <p>18 <b>Pharmaceuticals. And in that capacity, he reported</b></p> <p>19 <b>to Mr. Gerstenberg.</b></p> <p>20 Q And likewise, that reporting capacity</p> <p>21 encompassed Mr. Berkle's oversight of Roxane's</p> <p>22 branded products; correct?</p>
<p style="text-align: right;">203</p> <p>1 <b>business, Bedford Labs. And Roxane had a very</b></p> <p>2 <b>questionable future in the business. And so they</b></p> <p>3 <b>decided to give me that business to try to build it</b></p> <p>4 <b>up.</b></p> <p>5 Q And the predecessor executive in charge of</p> <p>6 Roxane's marketing was Mr. Tupa; is that correct?</p> <p>7 <b>A That's correct.</b></p> <p>8 Q And you were brought in to lend your</p> <p>9 expertise in the generic field to Roxane's</p> <p>10 marketing?</p> <p>11 <b>A Yeah. I mean, that's not exactly what was</b></p> <p>12 <b>going on here. You've got -- I think we've</b></p> <p>13 <b>explained to you that the businesses were split.</b></p> <p>14 <b>The Roxane branded generics were transferred</b></p> <p>15 <b>to the Roxane branded division, and the multisource</b></p> <p>16 <b>business was transferred to Bedford, Ben Venue, Tom</b></p> <p>17 <b>Russillo.</b></p> <p>18 Q Did -- when that transfer occurred, did you</p> <p>19 understand that you were directed to oversee the</p> <p>20 Roxane multisource business by Boehringer</p> <p>21 executives?</p> <p>22 MS. RIVERA: Object to form.</p>	<p style="text-align: right;">205</p> <p>1 MS. RIVERA: Object to form and foundation.</p> <p>2 THE WITNESS: Yes, I believe so.</p> <p>3 Q BY MR. ANDERSON: Would it be fair to say</p> <p>4 that the Roxane multisource and branded products</p> <p>5 were managed within the Boehringer Ingelheim</p> <p>6 corporate framework after roughly 1999?</p> <p>7 MS. RIVERA: Object to form.</p> <p>8 THE WITNESS: Try -- I'm not sure what you</p> <p>9 mean by the question. Would you please try to</p> <p>10 rephrase it or repeat it?</p> <p>11 Q BY MR. ANDERSON: Would it be fair to say</p> <p>12 that Boehringer Ingelheim was controlling the</p> <p>13 marketing of Roxane multisource products and Roxane</p> <p>14 branded products after roughly 1999?</p> <p>15 MS. RIVERA: Object to form.</p> <p>16 THE WITNESS: I can't define it the way</p> <p>17 you're describing it.</p> <p>18 Q BY MR. ANDERSON: How would you define it?</p> <p>19 <b>A That Roxane Labs had two divisions within</b></p> <p>20 <b>Roxane: One that handled the brand piece; one that</b></p> <p>21 <b>handled the multisource piece. And the person who</b></p> <p>22 <b>oversaw them on the multisource side was me, and</b></p>

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<p style="text-align: right;">270</p> <p>1 companies were separated?</p> <p>2 <b>A I saw Roxane Labs as a separate operating</b></p> <p>3 <b>subsidiary. I saw Ben Venue as a separate</b></p> <p>4 <b>operating subsidiary. I saw BIPI as a separate</b></p> <p>5 <b>operating subsidiary.</b></p> <p>6 Q What efforts were you aware of to keep the</p> <p>7 companies operating separately?</p> <p>8 MS. RIVERA: Object to form.</p> <p>9 THE WITNESS: I don't know what you mean by</p> <p>10 what efforts, but they were operating separately.</p> <p>11 Q BY MR. ANDERSON: Do you agree that the</p> <p>12 companies were sharing employees?</p> <p>13 MS. RIVERA: Object to form.</p> <p>14 THE WITNESS: There were some shared</p> <p>15 services going on with the Roxane piece. There</p> <p>16 were some shared services going on with the BIPI</p> <p>17 piece. Yeah. There were some shared services.</p> <p>18 Yes.</p> <p>19 Q BY MR. ANDERSON: Can you think of any</p> <p>20 efforts that were undertaken to keep Roxane</p> <p>21 separate from Boehringer Ingelheim Pharmaceuticals,</p> <p>22 Incorporated?</p>	<p style="text-align: right;">272</p> <p>1 actually deposited into BIPI accounts?</p> <p>2 MS. RIVERA: Object to form and foundation.</p> <p>3 Assumes facts not in evidence.</p> <p>4 THE WITNESS: The service center</p> <p>5 back-charged Roxane for everything they did.</p> <p>6 Q BY MR. ANDERSON: What do you mean by</p> <p>7 back-charged?</p> <p>8 <b>A They allocated their costs. Let's say they</b></p> <p>9 <b>were \$100. If 20 percent of their effort was</b></p> <p>10 <b>dedicated to Roxane, they charged Roxane's P&amp;L</b></p> <p>11 <b>20 percent. If 5 percent of it was dedicated to</b></p> <p>12 <b>CHC, which was the consumer health division, they</b></p> <p>13 <b>charged them. Vet Medica, which was the veterinary</b></p> <p>14 <b>division, they charged them.</b></p> <p>15 <b>So any work that was done by legal, by</b></p> <p>16 <b>contract services, by HR, there was an allocation</b></p> <p>17 <b>that went out to the subsidiaries. So they paid</b></p> <p>18 <b>for their services.</b></p> <p>19 Q I appreciate that, sir. I was asking a</p> <p>20 slightly different question, which is, did you have</p> <p>21 an understanding that Roxane billings ultimately</p> <p>22 were deposited in accounts managed by BIPI?</p>
<p style="text-align: right;">271</p> <p>1 MS. RIVERA: Object to form.</p> <p>2 THE WITNESS: I'm really not sure what</p> <p>3 you're asking me. They were operating as separate</p> <p>4 subsidiaries.</p> <p>5 Q BY MR. ANDERSON: In what way?</p> <p>6 <b>A They had their own P&amp;L.</b></p> <p>7 Q When you say P&amp;L, you're talking about</p> <p>8 profit and loss?</p> <p>9 <b>A Yes.</b></p> <p>10 Q So when it came to accounting for the sales</p> <p>11 of each organization, the money was kept separate?</p> <p>12 <b>A I don't know where the money ended up, but</b></p> <p>13 <b>in individual -- obviously, it was consolidated as</b></p> <p>14 <b>a corporation. But individual roll-ups started</b></p> <p>15 <b>with the subsidiary level, and the subsidiaries</b></p> <p>16 <b>paid for any shared services they received from the</b></p> <p>17 <b>parent corporation.</b></p> <p>18 Q Do you recall that BIPI had a billing and</p> <p>19 customer service center that serviced Roxane?</p> <p>20 <b>A Yes, they did.</b></p> <p>21 Q And are you aware that Roxane revenues</p> <p>22 generated on the sale of Roxane labeled drugs were</p>	<p style="text-align: right;">273</p> <p>1 MS. RIVERA: Object to form, foundation.</p> <p>2 Assumes facts not in evidence.</p> <p>3 THE WITNESS: If that was the case, it was</p> <p>4 because contract services, a shared service, was</p> <p>5 acting on our behalf and collecting our billings.</p> <p>6 Q BY MR. ANDERSON: In that context, you're</p> <p>7 talking about contract services managed by BIPI,</p> <p>8 controlling the billings of Roxane; correct?</p> <p>9 <b>A Billings for Roxane --</b></p> <p>10 MS. RIVERA: Object to form.</p> <p>11 THE WITNESS: -- billings for BIPI,</p> <p>12 billings for consumer health, billings for any of</p> <p>13 the subsidiaries for whom they were providing the</p> <p>14 service.</p> <p>15 Q BY MR. ANDERSON: The subsidiaries that</p> <p>16 you're referring to are subsidiaries of which</p> <p>17 company?</p> <p>18 <b>A Of BIC.</b></p> <p>19 Q So really the subsidiaries are all</p> <p>20 technically sister companies of BIPI?</p> <p>21 <b>A Yes.</b></p> <p>22 Q But BIPI's the entity that had all of the</p>

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<p style="text-align: right;">274</p> <p>1 shared services, like billings and legal and HR;  2 correct?  3 <b>A That's why they charged us for it.</b>  4 Q Is there any relationship between BIPI and  5 Roxane, for instance, as parent and subsidiary?  6 MS. RIVERA: Object to form.  7 THE WITNESS: As parent and subsidiary? No.  8 Q BY MR. ANDERSON: Okay. Did BIPI own  9 Roxane?  10 <b>A No.</b>  11 Q So when you're talking about charging  12 subsidiaries, you're really talking about BIPI  13 charging technically sister corporations?  14 <b>A Absolutely.</b>  15 Q Okay.  16 <b>A Because each subsidiary had its own P&amp;L</b>  17 <b>responsibility financially. And so since they were</b>  18 <b>providing services, BIPI didn't want to pay for it.</b>  19 <b>They charged us. It was budgeted and paid.</b>  20 Q Did you ultimately report on the Roxane P&amp;L  21 to a board?  22 <b>A Yes.</b></p>	<p style="text-align: right;">276</p> <p>1 <b>A No.</b>  2 Q Were the boards different?  3 <b>A Yes.</b>  4 Q And did you have different board meetings?  5 <b>A There were different board meetings.</b>  6 Q When were they held, typically?  7 <b>A I was not involved with the Boehringer</b>  8 <b>Ingelheim Corporation board meetings except as an</b>  9 <b>invitee, as you saw in some of these documents from</b>  10 <b>the minutes.</b>  11 Q When were the Roxane meetings usually held?  12 <b>A Usually quarterly, sometimes more often.</b>  13 <b>They were not board meetings per se, as I testified</b>  14 <b>earlier. They were operating committee meetings.</b>  15 Q What's the difference?  16 <b>A There wasn't really any difference.</b>  17 Q Well, was it a meeting with the board of  18 directors or not?  19 <b>A The board of directors participants were in</b>  20 <b>the meeting.</b>  21 Q Who were the board of directors  22 participants?</p>
<p style="text-align: right;">275</p> <p>1 Q Which board?  2 <b>A The Roxane board and the Boehringer</b>  3 <b>Ingelheim Corporation board.</b>  4 Q Did you report to those boards separately?  5 MS. RIVERA: Object to form.  6 THE WITNESS: I'm not sure what you mean. I  7 mean, as Roxane was an operating subsidiary, we  8 reported ourselves, our financials, to the board.  9 And that board -- that subsidiary then was rolled  10 up into the Boehringer Ingelheim subsidiary.  11 Q BY MR. ANDERSON: Yes, sir. I'm asking a  12 question about the actual logistics of reporting to  13 the board.  14 When you were reporting on Roxane's profit  15 and loss to a board, were you meeting with the  16 Roxane board?  17 <b>A Yes.</b>  18 Q And at the exact same time, were you also  19 meeting with the Boehringer Ingelheim Corporation  20 board, because it was the same people --  21 <b>A No.</b>  22 Q -- comprising both boards?</p>	<p style="text-align: right;">277</p> <p>1 <b>A Depending on the time, it would have been --</b>  2 MS. RIVERA: I think he listed them before.  3 THE WITNESS: Yeah. But depending on the  4 time, it would have been Werner Gerstenberg. It  5 would have been either Herman Tesner or Holger  6 Huels. It would have been Shelly. It would have  7 been myself.  8 And then we brought in other people, just  9 like the board for Boehringer brought in invitees  10 to explain what was going on.  11 Q BY MR. ANDERSON: Were there common  12 directors sitting on the board of BIC and Roxane?  13 <b>A Yes.</b>  14 Q How many were common to both boards?  15 MS. RIVERA: Object to form and foundation.  16 THE WITNESS: The only one I can say for  17 sure would be Werner Gerstenberg.  18 But I don't -- Holger Huels and Herman  19 Tesner, I'm not sure whether they were board  20 members or not, but I believe they were. But  21 somebody else will have to fill that in for you. I  22 don't know.</p>

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<p style="text-align: right;">282</p> <p>1 as a shared service attorney.</p> <p>2 Q Do you have any knowledge of any Medicaid</p> <p>3 rules, regulations, laws, or other legal</p> <p>4 requirements that were considered by the pricing</p> <p>5 committee in approving AWP's or WAC prices?</p> <p>6 MS. RIVERA: Object to form.</p> <p>7 THE WITNESS: Personally?</p> <p>8 Q BY MR. ANDERSON: Yes, sir.</p> <p>9 A That would have been the responsibility of</p> <p>10 John Powers and the contracting people to consider</p> <p>11 on anything that needed to be done.</p> <p>12 Q So the answer to my question is you don't</p> <p>13 personally have any awareness that such</p> <p>14 considerations were taken into account?</p> <p>15 A No. That is not the answer to your</p> <p>16 question. I do not -- did not personally do it</p> <p>17 myself. I believe that John Powers and the other</p> <p>18 folks who were responsible for Medicaid rebates</p> <p>19 would have taken care of that.</p> <p>20 Q Well, I'm not asking about rebates, sir.</p> <p>21 You know that Medicaid rebates aren't paid on WAC</p> <p>22 or AWP; right?</p>	<p style="text-align: right;">284</p> <p>1 THE WITNESS: No. I wouldn't say that. The</p> <p>2 fact that the federal government got a discount</p> <p>3 from that was something we were well aware of and</p> <p>4 we knew they were well aware of. So we didn't --</p> <p>5 MR. ANDERSON: Yeah.</p> <p>6 THE WITNESS: -- worry about it.</p> <p>7 Q BY MR. ANDERSON: What discount are you</p> <p>8 talking about?</p> <p>9 A In any pricing that they were paying.</p> <p>10 Q You're talking about the Medicaid rebate?</p> <p>11 A No. I'm not talking about Medicaid rebate.</p> <p>12 I'm talking about any pricing, anybody that was</p> <p>13 buying for the government.</p> <p>14 Q Oh. You're talking about like the federal</p> <p>15 supply schedule?</p> <p>16 A Sure.</p> <p>17 Q Okay. Well, let's set the federal supply</p> <p>18 schedule aside.</p> <p>19 I'm talking, sir, about the AWP's and WAC's</p> <p>20 that were being set by Roxane and then published to</p> <p>21 Medicaid programs, particularly the AWP's.</p> <p>22 Are you aware of anybody on the pricing</p>
<p style="text-align: right;">283</p> <p>1 A Right, yes. I do know that.</p> <p>2 Q I'm asking about WAC and AWP.</p> <p>3 A Yeah.</p> <p>4 Q Do you know of any persons on the pricing</p> <p>5 committee, or part of this pricing approval</p> <p>6 circulation process, considering anti-kickback</p> <p>7 laws, Medicare and Medicaid laws, Medicare or</p> <p>8 Medicaid fraudulent use laws, or anything similar</p> <p>9 to that?</p> <p>10 MS. RIVERA: Object to form.</p> <p>11 THE WITNESS: I was not aware of any laws</p> <p>12 that we would have been in danger of violating.</p> <p>13 We've talked about AWP. We were -- we believed we</p> <p>14 were following all the requirements.</p> <p>15 Q BY MR. ANDERSON: Which were what?</p> <p>16 A For AWP.</p> <p>17 Q I know. What was your understanding of</p> <p>18 those requirements?</p> <p>19 A That we were free to set AWP as we saw fit.</p> <p>20 Q So it was pretty much a decision that the</p> <p>21 drug company got to make in a vacuum?</p> <p>22 MS. RIVERA: Object to form.</p>	<p style="text-align: right;">285</p> <p>1 committee, or part of the pricing approval process,</p> <p>2 considering any Medicaid laws, any Medicare or</p> <p>3 Medicaid fraudulent abuse laws, any anti-trust -- I</p> <p>4 mean, pardon me, anti-kickback laws, et cetera?</p> <p>5 MS. RIVERA: Object to form.</p> <p>6 THE WITNESS: Yes. We were all aware of</p> <p>7 them. We were trained in anti-kickback laws. We</p> <p>8 knew what we could and couldn't do with rebates.</p> <p>9 Yes. So everybody took that into account.</p> <p>10 Q BY MR. ANDERSON: What's your understanding</p> <p>11 of how the anti-kickback laws impact the setting of</p> <p>12 AWP's?</p> <p>13 A No setting. It had nothing to do with the</p> <p>14 setting of AWP's.</p> <p>15 Q Is that your personal understanding, or is</p> <p>16 that what you understood through the training that</p> <p>17 you received?</p> <p>18 A You're trying to put words in my mouth.</p> <p>19 AWP was a number. It had nothing to do</p> <p>20 per se with anti-kickback or anything else. It was</p> <p>21 a number that we established. How it was used is</p> <p>22 another issue.</p>

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<p style="text-align: right;">286</p> <p>1 Q Would you say you were the individual who</p> <p>2 ultimately managed the pricing approval process or</p> <p>3 the pricing committee that approved the Roxane AWP</p> <p>4 and WACs?</p> <p>5 <b>A Ultimately, with the exception of that</b></p> <p>6 <b>little period of time that there was some question,</b></p> <p>7 <b>yes. I would say that.</b></p> <p>8 Q That little period of time being what, sir?</p> <p>9 <b>A 1998 through early 1999, where people</b></p> <p>10 <b>were -- we were trying to organize the way we</b></p> <p>11 <b>thought we were going to be divided up.</b></p> <p>12 Q Okay. Looking at Exhibit 11, which you just</p> <p>13 had in front of you, I'm focusing your attention,</p> <p>14 sir, on the last -- second to last page of</p> <p>15 Exhibit 11. There's a reference there to the NWDA</p> <p>16 sheets and the gold sheets.</p> <p>17 And my question is do you recall that gold</p> <p>18 sheets included AWP?</p> <p>19 <b>A I'm not positive. I'd have to look at a</b></p> <p>20 <b>gold sheet. But I believe they did, but I can't</b></p> <p>21 <b>swear to it.</b></p> <p>22 Q You mentioned earlier in your testimony that</p>	<p style="text-align: right;">288</p> <p>1 sure what you mean, they would negotiate. I forgot</p> <p>2 what you --</p> <p>3 Q BY MR. ANDERSON: Is it your understanding,</p> <p>4 sir, that when Roxane would offer pricing to</p> <p>5 customers such as chain drug stores, it would offer</p> <p>6 that pricing as a percentage off of AWP?</p> <p>7 MS. RIVERA: Object to form.</p> <p>8 THE WITNESS: In some cases, yes.</p> <p>9 Certainly, in cases where the pharmacy benefit</p> <p>10 manager -- Medco Merck, we mentioned earlier. They</p> <p>11 were used to getting the standard discount of 40,</p> <p>12 50, 60 percent off of AWP.</p> <p>13 Q BY MR. ANDERSON: I understand that. Let's</p> <p>14 set those managed care entities, like the pharmacy</p> <p>15 benefit managers like Medco, aside. Okay?</p> <p>16 I'm talking about pharmacies, independent</p> <p>17 pharmacies represented through GPOs, group</p> <p>18 purchasing organizations, or chain drug stores.</p> <p>19 <b>A Uh-huh.</b></p> <p>20 Q Isn't it true, sir, that when Roxane</p> <p>21 negotiated market pricing with GPOs, representing</p> <p>22 pharmacies or chain drug stores, that they did so</p>
<p style="text-align: right;">287</p> <p>1 gold sheets were created upon launch of a drug;</p> <p>2 correct?</p> <p>3 <b>A Launch of a drug, discontinuation of a drug,</b></p> <p>4 <b>change in pricing of a drug.</b></p> <p>5 Q And the gold sheets typically went out to</p> <p>6 the Roxane sales force; correct?</p> <p>7 <b>A Yes.</b></p> <p>8 Q And it's your best memory that the gold</p> <p>9 sheets most likely included AWP information;</p> <p>10 correct?</p> <p>11 <b>A Yes.</b></p> <p>12 Q Why did the gold sheets include AWP</p> <p>13 information?</p> <p>14 <b>A For pricing reasons. Most prices were based</b></p> <p>15 <b>on discount from AWP.</b></p> <p>16 Q Most prices to whom?</p> <p>17 <b>A To retail trade, to whomever we sold.</b></p> <p>18 Q It's your belief that when Roxane was</p> <p>19 negotiating prices with drug stores, for instance,</p> <p>20 they would do so based off AWP?</p> <p>21 MS. RIVERA: Object to form.</p> <p>22 THE WITNESS: They would negotiate? I'm not</p>	<p style="text-align: right;">289</p> <p>1 on a dollar price as opposed to a percentage off</p> <p>2 AWP?</p> <p>3 <b>A They did both. They would give them a</b></p> <p>4 <b>contract price, and it usually was accompanied</b></p> <p>5 <b>with, "That's a 60-, 70-percent discount from AWP."</b></p> <p>6 Q Why do you find that that reference to AWP</p> <p>7 in connection with the contract price was made?</p> <p>8 MS. RIVERA: Object to form.</p> <p>9 THE WITNESS: Why was the reference made?</p> <p>10 Q BY MR. ANDERSON: Yes, sir.</p> <p>11 <b>A Just as a benchmark. People like to know</b></p> <p>12 <b>where their price stood.</b></p> <p>13 Q Is it also true that that reference to AWP</p> <p>14 and contract price was an easy way for the pharmacy</p> <p>15 to evaluate spread?</p> <p>16 MS. RIVERA: Object to form.</p> <p>17 THE WITNESS: Possibly, yes.</p> <p>18 Q BY MR. ANDERSON: Is it your testimony that</p> <p>19 that's the typical mechanism by which Roxane</p> <p>20 offered pricing to pharmacies?</p> <p>21 MS. RIVERA: Object to form.</p> <p>22 THE WITNESS: Is it my -- no. That's not my</p>

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